

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS**

Juan Rodriguez and	§
Hacienda Mis Padres Mexican	§
Grill Corp.	§

Plaintiff §

v.

No.

Evanston Insurance Company,	§
An Illinois Corporation, d/b/a	§
Evanston Insurance Company f/k/a	§
Essex Insurance Company d/b/a	§
Essex Insurance Services d/b/a	§
Essex Insurance Services, Inc., and	§
Markel Service, Incorporated	§

Defendants §

**DEFENDANTS EVANSTON INSURANCE COMPANY
AND MARKEL SERVICE INCORPORATED'S
NOTICE OF REMOVAL**

Defendants, Evanston Insurance Company, successor by way of merger with Essex Insurance Company (“Evanston”), which was improperly named by Plaintiffs as Evanston Insurance Company, an Illinois Corporation, d/b/a Evanston Insurance Company f/k/a Essex Insurance Company d/b/a Essex Insurance Services d/b/a Essex Insurance Services, Inc. and Markel Service Incorporated (“Markel”) file this Notice of Removal of the civil action filed against them by the Plaintiffs, Juan Rodriguez and Hacienda Mis Padres Mexican Grill Corp., from the State County Court of Montgomery County, Texas, County Court at Law No. 2 (the “State Court Action”) to the United States District Court for the

Southern District of Texas, Houston Division, pursuant to the provisions of 28 U.S.C. §§ 1332, 1441, and 1446.

I. Basis for Removal

1. Plaintiffs obtained a default judgment against Evanston's insured and now seek indemnity under the insurance policy as third-party judgment creditors.

2. A defendant must file a notice of removal within thirty days of first receiving the plaintiffs' petition after service of process. 28 U.S.C. § 1446; *see also Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 354, 119 S. Ct. 1322, 1328, 143 L. Ed. 2d 448 (1999) ("defendant's period for removal will be no less than 30 days from service, and in some categories, it will be more than 30 days from service, depending on when the complaint is received"); *Mumfrey v. CVS Pharmacy, Inc.*, 719 F.3d 392, 397–98, 398 n.10 (5th Cir. 2013) ("28 U.S.C. § 1446(b) refers to initial pleadings broadly"). On September 12, 2016, Plaintiffs requested service of process on Defendants through the Commissioner of Insurance for the Texas Department of Insurance in the above captioned case filed in the County Court at Law No. 2 of Montgomery County.¹ On September 15, 2016, the Texas Department of Insurance mailed Defendants the citation and Plaintiffs' First Amended

¹ Exhibit A, Letter from Texas Department of Insurance to Evanston Insurance Company (September 15, 2016); Exhibit B, Letter from Texas Department of Insurance to Markel Service, Incorporated (September 15, 2016).

Petition and Request for Disclosure.² As a result, this Notice of Removal is filed within the thirty-day deadline. 28 U.S.C. § 1446(b).

3. Under 28 U.S.C. § 1441(a), which specifies that cases must be removed to “the district court of the United States for the district and division embracing the place where such action is pending,” the Southern District of Texas, Houston Division is the proper division for removal of a state court case pending in Montgomery County, Texas.

4. Under 28 U.S.C. § 1332(a)(1), federal district courts have jurisdiction over civil cases between citizens of different states where the matter in controversy exceeds \$75,000, exclusive of interest and cost. This Court has jurisdiction over this dispute under 28 U.S.C. § 1332(a)(1) because:

- Plaintiffs are citizens of Texas as identified in Plaintiffs’ First Amended Petition and Request for Disclosure.³
- Evanston is incorporated in Illinois and has its principal place of business in Illinois.
- Markel is incorporated in Virginia and has its principal place of business in Virginia.
- Plaintiffs’ First Amended Original Petition and Request for Disclosure states that they seek monetary relief exceeding \$200,000.⁴ Plaintiffs further pled that they seek “[a]ctual damages in the amount of at least \$165,702.22 plus \$10,000 in attorney’s fees.”⁵

² *Id.*

³ Exhibit C, Plaintiffs’ First Amended Petition and Request for Disclosure at ¶¶ 2 and 3.

⁴ Exhibit C, Plaintiffs’ First Amended Petition and Request for Disclosure at ¶ 1.

⁵ *Id.* at ¶ 22(a).

5. Defendants demanded a jury trial in their Original Answer filed in the State Court Action.⁶

6. Pursuant to Local Rule 81, this Notice of Removal is accompanied by the following:

- a. All executed process in this case;⁷
- b. Pleadings asserting causes of action and all answers to such pleadings;⁸
- c. All orders signed by the state judge;⁹
- d. The docket sheet;¹⁰
- e. An index of matters being filed;¹¹ and
- f. A list of all counsel of record with their addresses and phone numbers and identifying the parties represented.¹²

I. Conclusion

For the foregoing reasons, this Court should exercise diversity jurisdiction over this case.

⁶ Exhibit D, Defendants' Original Answer at ¶ 17.

⁷ Exhibits E and F.

⁸ Exhibits C and D.

⁹ No orders have been signed by the state judge in this matter.

¹⁰ Exhibit G.

¹¹ Exhibit H.

¹² Exhibit I.

Respectfully submitted,

WARE, JACKSON, LEE, O'NEILL,
SMITH & BARROW, L.L.P.

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**Attorney for Defendants
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CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of October, 2016, a true and correct copy of the foregoing document was served on counsel for Plaintiffs pursuant to the Federal Rules of Civil Procedure, as follows:

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